

~~FCC Before the~~ SECTION
Federal Communications Commission
 Washington, D.C. 20554

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DA 97-2727

In the Matter of)

Investigation of Alascom, Inc.,
 Interstate Transport and Switching Services)

DISPATCH)

CC Docket No. 95-182

Alascom, Inc.
 Revisions to Tariff F.C.C. No. 11)

Transmittal No. 921

ORDER

Adopted: December 31, 1997; **Released:** December 31, 1997

By the Deputy Chief, Competitive Pricing Division, Common Carrier Bureau:

I. INTRODUCTION

1. On October 3, 1997, Alascom, Inc. (Alascom), filed Transmittal No. 921 to revise its Tariff F.C.C. No. 11 (Tariff 11) for the dominant common carrier interexchange services that it provides in Alaska (Alaska Services).¹ These proposed tariff revisions are scheduled to become effective January 1, 1998. These revisions would change certain transport and switching rates for Intra-Alaska Bush and Non-Bush locations; change certain Bush and Non-Bush rates for Alaska/Continental United States transport services; and define, change, and clarify various terms and conditions for these Alaska Services.² Earlier, we directed Alascom to defer the effective date of certain portions of the above transmittal to January 31, 1998.³ In this Order, we suspend the effectiveness of the remaining provisions of this transmittal for one day, set them for investigation, consolidate this investigation into

¹ The Alaska Services offered by Alascom enable other domestic interexchange carriers to provide telecommunications service to and from Alaska. See *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, CC Docket No. 83-1376, 9 FCC Rcd 3023 (1994) (*Market Structure Order*).

² Alascom, Inc., Revisions to Tariff F.C.C. No. 11, Trans. No. 951, filed Oct. 3, 1997, Description and Justification (D&J) at 1-3.

³ Letter to M. Peterson, Administrator-Rates and Tariffs, AT&T/Alascom, from J.D. Schlichting, Chief, Competitive Pricing Division, Common Carrier Bureau, FCC, dated Dec. 30, 1997. In particular, we deferred for an additional 30 days the effective date of certain tariff revisions proposed in the above transmittal. These revisions would have changed some of the procedures under which customers submit orders, and Alascom processes those orders, for Alaska Services.

the investigation initiated in the *Transmittal 790 Suspension Order*,⁴ and impose an accounting order.

2. On October 28, 1997, ATU-Long Distance, Inc. (ATU-LD) filed a petition to suspend and investigate the above tariff transmittal.⁵ Alascom responded on November 10, 1997 (Alascom Response). On November 7, 1997, Alaska Network Systems, Inc. (ANS), filed a petition to suspend and investigate the above transmittal (ANS Petition). With its suspension petition, ANS filed a motion urging that its late-filed petition be accepted (ANS Motion). On November 12, 1997, Alascom filed a motion to strike the ANS Petition (Alascom Motion). On November 24, 1997, ANS filed an opposition to the Alascom Motion (ANS Opposition). For the reasons stated below, we deny the ANS Motion and dismiss the ANS Petition.

II. CONTENTIONS

3. ATU-LD asks the Commission to suspend the above transmittal, order an investigation, and consolidate that investigation with the previously-ordered investigations of earlier Alascom Tariff 11 transmittals. Because the above transmittal modifies some of the rates established in these previous transmittals, ATU-LD contends that "implicit" in this transmittal are all of the problems associated with the earlier ones.⁶

4. ATU-LD contends that the proposed increases in Non-Bush intra-Alaska transport and switching rates are not consistent with Alascom's earlier claims that the costs of providing such Alaska Services would be decreased by the recent reduction in the number of its Alaska switching centers from three to one.⁷ ATU-LD also submits Alascom has not adequately explained inconsistencies between the allegedly high "wholesale" rates for these services at a time when Alascom's "retail" rates have declined and Alascom claims to have taken steps to reduce the costs of providing these services in Alaska.⁸ Stating that the primary user of Alascom's Tariff 11 Bush service is "almost certainly" AT&T or another Alascom affiliate, ATU-LD objects to the proposed decrease in Alascom's rates for Bush Intra-Alaska transport services. Though it traces that rate decrease to a reported drop in demand for these Bush services accompanied by a significant shift in the ratio of Bush

⁴ Alascom, Inc., Tariff F.C.C. No. 11, Trans. No. 790, CC Docket No. 95-182, 11 FCC Rcd 3703 (Com.Car.Bur. 1995) (*Transmittal 790 Suspension Order*) (suspending and investigating Alascom Transmittal Nos. 790 and 797).

⁵ ATU-LD filed an erratum to its petition on November 3, 1997. References to that petition, therefore, include the changes reflected in that erratum.

⁶ ATU-LD Petition at 3.

⁷ *Id.* at 4-5.

⁸ *Id.* at 5.

demand to Non-Bush demand, ATU-LD contends such significant changes in demand cannot be verified absent the provision of additional information by Alascom.⁹

5. On several grounds, ATU-LD challenges Alascom's projected decline in demand for Bush services. First, ATU-LD argues that demand for these services should be stimulated by Alascom's reported increase in customer enrollments and the recent increase in the capacity of its Alaska Spur. Second, ATU-LD contends that Alascom does not provide sufficient support for its projections of future Bush demand. For example, ATU-LD questions whether these demand projections adequately take into account the traffic carried on Alascom's private line circuits. Third, ATU-LD objects to Alascom's apparent exclusion of international traffic and certain resale traffic from its projection of demand and calculation of rates for these services. Fourth, because aggregate traffic to and from Alaska has been increasing in recent years, ATU-LD argues that demand for Alascom's interexchange services should either remain stable or increase absent a significant decline in Alascom's market share.¹⁰

6. Arguing that Alascom's Tariff 11 offers "wholesale" service and, thus, its Tariff 11 rates should be set without regard to "retail" costs, ATU-LD claims that Alascom appears improperly to include some retail costs in the calculation of these rates, for example, the costs of certain operator, marketing, and customer service functions.¹¹ In addition, ATU-LD urges re-examination of the Tariff 11 rate development process in light of such alleged inconsistencies and the new methods for the calculation of wholesale rates under the Telecommunications Act of 1996.¹²

7. ATU-LD objects to the provisions of Alascom's Tariff 11 stating that transport and switching services are not available for separate purchase. ATU-LD contends such a restriction is contrary to the policy of rate element unbundling promoted by the Telecommunications Act of 1996 and that Alascom's "transport only" customers should not have to subscribe to Alascom's full switching service if all they need is certain call measurement data and no other switching functions.¹³

8. ATU-LD contends that the Commission has defined the services that Alascom must provide in Tariff 11 as all encompassing, that is, to include all the interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska

⁹ *Id.* at 6.

¹⁰ *Id.* at 8-9.

¹¹ *Id.* at 10-11.

¹² *Id.* at 10.

¹³ *Id.* at 11.

local exchange carrier (LEC).¹⁴ ATU-LD asks the Commission to order Alascom to state within Tariff 11 that these services include the provision of certain call measurement and Signalling System 7 services, because such services allegedly are necessary to the provision of interstate transport and switching up to the point of interconnection with Alaska LECs.¹⁵

9. ATU-LD challenges certain changes that Alascom proposes to make in the service ordering provisions currently found in Tariff 11. ATU-LD opposes a single day or other brief suspension of these revisions subject to an accounting order and subsequent investigation, arguing that such action would not adequately protect ATU-LD and other new market entrants from "consequential" business losses associated with anticipated delays by Alascom in filling orders under these proposed procedures. Instead, ATU-LD contends, these changes should be rejected immediately or suspended pending the outcome of the current Tariff 11 investigation.¹⁶ ATU-LD also asks the Commission to order that Alascom revise its Tariff 11 to list explicitly each item of technical information required to be submitted with a Tariff 11 order.¹⁷

10. Alascom responds to the ATU-LD Petition by claiming that its provision of Tariff 11 services in Alaska has been difficult, in part because these services are required of Alascom by the Commission and, thus, were not developed by Alascom on its own. Noting the existence of various controversies surrounding Alascom's Cost Allocation Plan (CAP), Alascom contends that premature initiation of a potentially extensive and burdensome rate case could be futile if, in the course of the resolving those controversies, the Commission alters the fundamental legal and regulatory underpinnings of Tariff 11. Consequently, Alascom states it would not object to a brief suspension of the above transmittal, inclusion of this transmittal in the above investigation, and making this transmittal subject to an accounting order. Because it does not object to such a suspension, Alascom explains that it does "not now respond directly to the assertions of ATU-LD." Alascom, nevertheless, denies the substantive allegations raised in the ATU-LD Petition, stating that those allegations are factually incorrect and legally unsupported.¹⁸

11. In its motion to accept its late-filed petition to suspend, ANS acknowledges that its petition does not add any new arguments or evidence to the record in this proceeding but urges that its petition, nevertheless, be accepted because, according to ANS, its late filing would not impose any additional burdens on Alascom. The Alascom motion to strike the ANS Petition contends that ANS offers no justification for this late

¹⁴ Id. (citing *Market Structure Order*, 9 FCC Rcd at 3023 n. 5).

¹⁵ Id. at 11-12.

¹⁶ Id. at 12-15.

¹⁷ Id. at 14-15.

¹⁸ Alascom Response at 2.

petition. Alascom also claims ANS fails to allege facts sufficient to give it standing in this proceeding even if its petition had been timely filed. Alascom also contends that because ANS is an affiliate of ATU-LD, represented by the same legal counsel, the interests, if any, of ANS in this proceeding would be protected adequately by ATU-LD.¹⁹ In its opposition to the Alascom motion to strike, ANS contends that Commission acceptance of its petition would not impose any additional burdens or otherwise prejudice Alascom because the ANS Petition does not raise any new issues that might require Alascom to revise its planned response.²⁰ ANS also contends that, unlike ATU-LD, it will provide service in part through its own facilities, and that, because it is separate and different from ATU-LD, it is not so closely aligned with ATU-LD that its interests would be adequately protected by the participation of ATU-LD in these proceedings. In addition, ANS alleges that acceptance of its petition would enable it to participate in certain informal negotiations and status conferences being held at the Commission in connection with the above tariff investigation.²¹

III. DISCUSSION

12. With the possible exception of the proposed changes in the ordering provisions discussed below, we find that Transmittal No. 921 raises the same issues regarding rate levels, rate structures, and terms and conditions of service as those identified in the *Transmittal 790 Suspension Order*. For example, the proposed tariff revisions, like the earlier Alascom Transmittal Nos. 790, 797, 807, and 852 raise questions regarding the adequacy of Alascom's cost support and the extent to which the terms and conditions in the proposed tariff comply with the Communications Act and relevant Commission orders. We conclude, therefore, that significant questions of lawfulness have been raised concerning Alascom's Transmittal No. 921. Accordingly, except as noted below, we suspend the provisions of Transmittal No. 921 for one day, set those provisions for investigation, and consolidate that investigation with the investigation initiated in the *Transmittal 790 Suspension Order*. These rate changes will also be subject to an accounting order to facilitate any refunds that may later be necessary. Our accounting order will assure that ATU-LD and other Tariff 11 customers will be able to receive refunds of any amounts improperly charged should the Commission ultimately determine that Alascom's tariff is unlawful.

13. In the above tariff transmittal, Alascom proposes certain changes in the procedures to be followed by customers submitting orders for new or changed service and Alascom's related procedures in processing such orders and providing the service requested.

¹⁹ Alascom Motion at 2-3.

²⁰ ANS Motion at 1-2.

²¹ ANS Opposition at 2-4. ANS adds that it seeks the opportunity to diverge from ATU-LD's positions when appropriate and necessary to its business interests. *Id.* at 4.

As indicated above,²² we have already directed Alascom to defer the effective date of these changes for an additional 30 days. We took this action to provide us with additional time to analyze the issues raised by these proposed changes.

14. We now address the ANS Petition. Under Section 1.773(a)(2)(iv) of the Commission's Rules, 47 C.F.R. § 1.773(a)(2)(iv), petitions to suspend the above tariff transmittal were due 25 days after the date of that tariff filing. Because ANS filed its petition more than 25 days after the transmittal was filed, that petition was late. While the Commission can and does grant motions to accept late-filed petitions for good cause, ANS has not provided, and we do not otherwise find, good cause to accept this late-filed petition. Accordingly, we deny the ANS motion to accept late-filed petition. We will, nevertheless, incorporate the ANS Motion as well as the Alascom Motion and the ANS Response into the record of this proceeding as *ex parte* filings. Because we do not find good cause to grant the ANS Motion, we need not address Alascom's contention that ANS lacks standing to participate in this and related proceedings.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and through the authority delegated pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, the revisions to Alascom, Inc. Tariff F.C.C. No. 11 contained in Transmittal No. 921 ARE SUSPENDED for one day from its effective date and an investigation of that tariff transmittal is instituted and included in CC Docket No. 95-182, except as otherwise provided above.

16. IT IS FURTHER ORDERED that Alascom, Inc., SHALL FILE tariff revisions within five business days of the release date of this Order to reflect this suspension.

17. IT IS FURTHER ORDERED that, for these purposes, we waive Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59. Alascom should cite the "DA" number of the instant Order as the authority for this filing.

18. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 204(a), and through the authority delegated pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, Alascom, Inc., SHALL KEEP ACCURATE ACCOUNT of all amounts received by reason of the rates that are the subject of this investigation.

19. IT IS FURTHER ORDERED that the "Motion of Alaska Network Systems, Inc., to Accept Late-Filed Petition" IS DENIED and the related "Petition of Alaska

²² See n.3, *supra*.

Network Systems To Suspend and Investigate" IS DISMISSED.

20. IT IS FURTHER ORDERED that the petition to suspend and investigate Alascom Transmittal No. 921 filed by ATU-Long Distance, Inc., IS GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Jane Jackson".

Jane Jackson
Deputy Chief, Competitive Pricing Division
Common Carrier Bureau